

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 09-20215

Plaintiff,

HONORABLE SEAN F. COX
United States District Judge

v.

D-2 JOSE CASTRO-RAMIREZ,

Defendant.

ORDER FOLLOWING HEARING
TO RESOLVE POSSIBLE CONFLICT OF INTEREST

On November 24, 2009, the Government filed its “Motion For Hearing to Conduct Inquiry Into Joint Representation Pursuant to FED. R. CRIM. P. 44(c)(2)” [Doc. No. 183]. In that motion, the Government expressed concern that attorney Allen M. Wolf (“Wolf”), who represents Defendant Dr. Jose Castro-Ramirez (“Castro-Ramirez”) in this action, previously represented one of Dr. Castro-Ramirez’s current co-defendants in another prior criminal matter before the Court, Mr. Shafiulla Abdul Hanif (“Hanif”).

Mr. Hanif was scheduled to appear before the Court on January 23, 2008 for a plea hearing in the other matter, but failed to appear that day and remains at large despite a bench warrant being issued for Mr. Hanif’s arrest. [See E.D. Mich. Case No. 07-CR-20091, Doc. No. 27]. Since that time, on June 24, 2009, both Mr. Hanif and Dr. Castro-Ramirez, along with fourteen additional defendants, were indicted in the instant matter.

The Government raised the issue that Mr. Wolf’s prior representation of Mr. Hanif may pose a potential conflict of interest in this case, and requested that the Court set a hearing to

determine whether there is a potential or actual conflict of interest as a result.

The Court held hearings on the motion on December 9, 2009 and January 13, 2010. During those hearings, the Court explored the potential conflicts of interest with the parties. The Court then addressed the possible conflict of interest issue with Dr. Castro-Ramirez.

Dr. Castro-Ramirez indicated that he fully understood the issue, had an opportunity to consult with outside counsel on the issue, had been given adequate time to consider the issue, and had no questions for the Court. Dr. Castro-Ramirez indicated on the record that, to the extent any potential conflict of interest still exists, he wishes to waive his right to conflict-free representation.

The Court holds that Mr. Hanif has constructively waived his right to object to Mr. Wolf's current representation of Dr. Castro-Ramirez. A client's long delay in voicing an objection to allegedly adverse representation constitutes an implied waiver of the right to object. *See, e.g., Exterior Sys., Inc. v. Noble Composites, Inc.*, 210 F.Supp.2d 1062, 1077 (N.D. Ill. 2002); *Chem. Waste Mgmt., Inc. v. Sims*, 875 F.Supp. 501, 505 (N.D. Ill. 1995). That is particularly true when trial is imminent - as is the case in this matter. *See In re Valley-Vulcan Mold Co.*, 287 B.R. 322, 338 (6th Cir. BAP 1999). By absenting himself from the jurisdiction of this Court, Mr. Hanif has acted in a manner analogous to those cases in which courts have found constructive or implied waiver. Furthermore, any potential violation of Mr. Hanif's Sixth Amendment rights can be obviated simply by Mr. Hanif retaining separate counsel in any future proceedings in this matter.¹

¹ The Government has represented to the Court that Mr. Hanif has fled the country. Given this fact, the possibility that Mr. Hanif will ever be prosecuted in this matter is remote.

Accordingly, **IT IS ORDERED** that the Court hereby finds that a conflict of interest does not currently exist in this matter as a result of Mr. Wolf's prior representation of Mr. Hanif. Moreover, to the extent that any possible potential conflict of interest still exists, the Court finds that Dr. Castro-Ramirez has made a knowing, voluntary, and informed waiver of his right to conflict-free representation under the Sixth Amendment. Thus, Mr. Wolf may continue to represent Dr. Castro-Ramirez in this matter.

IT IS SO ORDERED.

s/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: January 14, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 14, 2010, by electronic and/or ordinary mail.

s/Jennifer Hernandez
Case Manager